

## ***VIRGINIA:***

*In the Court of Appeals of Virginia on Friday the 31st day of August, 2018.*

Kristin L. Burns, Petitioner,  
against Circuit Court No. 2011-06251  
Kenneth W. Sullivan, Respondent.

Upon a Motion for Extension of Time to file a  
Petition for Review Pursuant to Code § 8.01-626

Before Judge Chafin

On August 28, 2018, Kristin L. Burns filed a “Petition for Extension of 15-Day Timeframe to Submit a Petition for Review of Related Cases 2011-06251 and MI-2018-666.”

On March 27, 2018, the circuit court entered an order denying Burns’ request for permission to file a petition for a protective order. Burns has a long history with the circuit court regarding litigation over the custody of her children.<sup>1</sup> The circuit court previously ordered that Burns had to seek leave of court before filing any pleadings with the court. The March 27, 2018 order “reminds” Burns “that the restrictions on her right to file pleadings with the [c]ourt are not designed to punish her but to encourage her to complete the evaluations ordered [in 2014] to give her a chance to restore her relationship with her children.” After hearing evidence and argument, the circuit court denied Burns’ request for permission to file a petition for a protective order because it found that there was no evidence of family abuse.

On August 14, 2018, Burns appeared in the circuit court for trial on a misdemeanor charge. While the criminal charge was pending in the circuit court, the court granted Burns leave to file motions in the criminal case. Burns alleges that she filed a motion in the criminal matter for leave to seek a protective order. By

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<sup>1</sup> Burns also has filed numerous appeals to this Court and the Supreme Court of Virginia. This order does not include Burns’ appellate history, as it is not relevant to the underlying issues.

order of August 14, 2018, the circuit court granted the Commonwealth's motion to *nolle prosequi* the misdemeanor charge.

In Burns' motion for an extension of time, she states that she intends to seek appellate review of the March 27, 2018 order denying her request for leave to seek protective order, as well as *nolle prosequi* order entered on August 14, 2018. Burns further alleges that on August 24, 2018, she filed a motion in the criminal matter requesting "the circuit court to reconsider denying [her] an opportunity to ask for a protective order[.]"

Code § 8.01-626 states, in part:

Wherein a circuit court (i) grants an injunction or (ii) refuses an injunction or (iii) having granted an injunction, dissolves or refuses to enlarge it, an aggrieved party may, within 15 days of the court's order, present a petition for review to a justice of the Supreme Court; however, if the issue concerning the injunction arose in a case over which the Court of Appeals would have appellate jurisdiction under §§ 17.1-405 or 17.1-406, the petition for review shall be initially presented to a judge of the Court of Appeals within 15 days of the court's order. The aggrieved party shall serve a copy of the petition for review on the counsel for the opposing party, which may file a response within seven days from the date of service unless the court determines a shorter time frame. The petition for review shall be accompanied by a copy of the proceedings, including the original papers and the court's order respecting the injunction. The justice or judge may take such action thereon as he considers appropriate under the circumstances of the case.

Code § 8.01-626 confers jurisdiction upon this Court when an aggrieved party files a petition for review within fifteen days of a circuit court's order granting or refusing an injunction. Burns did not file her petition for review of the March 27, 2018 order within fifteen days of entry and did not seek an extension of time to seek review within fifteen days of entry. Thus, the Court denies her request for an extension of time as untimely.<sup>2</sup>

We further note that a petition for review does not lie to the August 14, 2018 *nolle prosequi* order because that order did not grant or refuse an injunction, nor did it dissolve or refuse to enlarge an injunction.

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<sup>2</sup> The Court acknowledges but rejects Burns's argument that Code § 8.01-229(K) tolled the fifteen-day jurisdictional period within which she could seek review. The tolling provisions of Code § 8.01-229 apply to civil actions not to petitions for review.

Accordingly, the August 14, 2018 *nolle prosequi* order does not fall within the parameters of Code § 8.01-626. See Rule 5A:38(f)(i).<sup>3</sup>

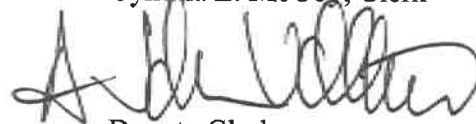
The motion for an extension of time is denied because it is untimely with respect to the March 27, 2018 order and this Court does not have jurisdiction under Code § 8.01-626 with respect to the August 14, 2018 *nolle prosequi* order.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:



Deputy Clerk

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<sup>3</sup> Moreover, an order granting the Commonwealth's motion to *nolle prosequi* is not an appealable order. Code § 17.1-406(A).